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IN THE

Supreme Court of the United States

Nos. 41, 50, 280 October Term, 1956

AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL NO. 427, A.F.L. ET AL.,
Petitioners

vs.

FAIRLAWN MEATS, INC.

and

SAN DIEGO BUILDING TRADES COUNCIL, MILLMEN'S UNION, LOCAL 2020, BUILDING MATERIAL AND DUMP DRIVERS, LOCAL 36,
Petitioners

vs.

J. S. GARMON, J. M. GARMON and W. A. GARMON

and

P. S. GUSS D/B/A PHOTO SOUND PRODUCTS MANUFACTURING CO.,
Appellant

vs.

UTAH LABOR RELATIONS BOARD

On Writs of Certiorari to the Supreme Courts of the States of Ohio and California, and on Appeal from the Supreme Court of the State of Utah.

BRIEF OF THE COMMONWEALTH OF PENNSYLVANIA AS AMICUS CURIAE

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INTEREST OF THE COMMONWEALTH OF PENNSYLVANIA

The Commonwealth of Pennsylvania, in its sovereign capacity, has power to regulate the employment relationship in order to reduce industrial strife and encourage the amicable adjustment of industrial disputes. *In re W. T. Grant Co.*, 341 Pa. 70, 17 A. 2d 614 (1941).

To this end, the Legislature of Pennsylvania has enacted a comprehensive labor relations statute designed to supplement Federal legislation so that every labor relations question and dispute, involving enumerated unfair labor practices and questions of employee representation, and arising within the State might be heard or remedied under the appropriate authority, Federal or State. Act of June 1, 1937, P. L. 1168 et seq., as amended, 43 P.S. §211.1 et seq. (1956).

The statute provides for the creation of a Labor Relations Board with power to investigate, prevent and remedy unfair labor practices, and to determine questions concerning the representation of employees.

In order to effectuate the purposes of the act, the Pennsylvania Labor Relations Board has asserted jurisdiction, when the National Labor Relations Board has declined to do so, in cases involving employers whose volumes of interstate business fall short of the minimum prescribed by the National Board as a prerequisite for its taking jurisdiction. The right of the Pennsylvania Labor Relations Board to assert juris-

diction in such cases has been questioned, and the matter is currently before the Pennsylvania Supreme Court. *Fred G. Hodges Bedding Co. v. Pennsylvania Labor Relations Board*, No. 71 January Term, 1957.

The determination of this issue in the present causes will also dispose of the question in the Pennsylvania case. An adverse ruling by this Honorable Court would foster industrial conflict, impede the peaceful settlement of industrial disputes, and jeopardize the labor relations program of this State—all to the prejudice of the interests of Pennsylvania's citizens and residents.

An examination of the briefs filed in the State Court by the parties to the instant case indicates that some aspects of this question will not be adequately presented. It is believed that the brief which the Commonwealth hereby submits will promote more complete argument on this issue.

QUESTIONS PRESENTED

1. May the National Labor Relations Board refuse to assert its statutory jurisdiction in labor relations' cases affecting interstate commerce solely because the employers' volumes of interstate business fall below certain minimum standards promulgated by the National Board as a prerequisite to its taking jurisdiction?

2. May an appropriate state agency assert jurisdiction and apply state law when the National Labor Relations Board declines to assert its jurisdiction, in labor relations cases affecting interstate commerce and involving employers whose volumes of interstate business fall short of the minimum prescribed by the National Board as a prerequisite to its taking jurisdiction?

3. Do the jurisdictional regulations of the National Labor Relations Board, setting minimum standards of interstate transactions, limit the scope of the Federal Labor Relations Act and vest in the States exclusive jurisdiction over cases failing to comply with these standards?

SUMMARY OF ARGUMENT

1. The NLRB exceeded its statutory authority in promulgating regulations restricting the exercise of its jurisdiction to cases involving substantial volumes of interstate transactions. Since Congress intended to protect those industries whose quantitative economic effects on interstate commerce was relatively small, the Board's refusal to accept jurisdiction is inconsistent with the purposes of the national labor policy. Moreover, the withdrawal of protection from such industries actually impedes the development of collective bargaining and fosters industrial unrest. Even assuming that budgetary considerations compel the reduction of the Board's case load, the establishment of blanket rules of exclusion instead of case by case consideration is a fallacious method of conserving resources. Ceding appropriate cases to state agencies under section 10(a) of the LMRA and seeking increased funds from Congress offer adequate solutions.

2. The NLRA and the LMRA create a system of rights and remedies applicable to all enterprises whose transactions affect interstate commerce. Since these rights may be enforced only through the NLRB, the refusal by that body to exercise jurisdiction effectively cuts off the protection of the acts from a substantial class of employers. The declination of jurisdiction is unrelated to any labor policy, and hence, such refusal to enforce federal rights, whether "public" or "private", is repugnant to the due proc-

ess clause of the Fifth Amendment to the United States Constitution.

3. State regulation of labor relations is not supplanted unless it directly conflicts with the Congressional regulation or policy. When the NLRB declines to assert its jurisdiction for budgetary reasons, state regulation cannot conflict with any federal rule or procedure. In that case, labor relations are governed by the states or they are entirely ungoverned. The refusal of the Board to assert jurisdiction is not a declaration of preference for non-regulation, but of indifference to treatment. The existence of a provision for the ceding of the Board's jurisdiction to appropriate state labor boards is irrelevant to the determination of the question involved herein, since that section is operative only when the Board has asserted jurisdiction. The suggestion of possible conflict between state agencies and the national board because of a confusion as to proper jurisdiction appears unfounded. Present standards for determining jurisdiction are sufficiently clear and stable to form a guide for correct decisions.

4. While Congress granted the Board power to take jurisdiction over every case affecting commerce, the Board was permitted to limit the operative scope of the federal labor relations statutes. In the promulgation of the present jurisdictional standards the Board has determined the extent of the acts' coverage and consequently, federal jurisdiction. Hence, state agencies have exclusive jurisdiction over cases involving interstate transactions below the minimum jurisdictional volumes.

ARGUMENT

I. THE NATIONAL LABOR RELATIONS BOARD MAY NOT REFUSE TO ASSERT ITS STATUTORY JURISDICTION IN LABOR RELATIONS CASES AFFECTING COMMERCE SOLELY BECAUSE THE EMPLOYERS' VOLUMES OF INTERSTATE BUSINESS FALL BELOW CERTAIN MINIMUM STANDARDS PROMULGATED BY THE BOARD AS A PREREQUISITE TO ITS TAKING JURISDICTION

A. The NLRB Lacks the Statutory Authority To Issue Regulations Imposing Jurisdictional Standards Consisting of Minimum Volumes of Interstate Transactions and To Decline To Assert Its Jurisdiction in Labor Relations Cases Affecting Commerce Solely because These Standards Are Not Complied With

The LMRA provides that "the Board shall have authority . . . to make . . . such rules and regulations as may be necessary to carry out the provisions of this Act." 61 Stat. 140 (1947), 29 U.S.C. §156 (1952). In 1954 the Board promulgated certain jurisdictional standards, consisting of minimum volumes of interstate transactions, and announced that it would refuse to exercise its jurisdiction when these standards were not complied with. 19 NLRB Ann. Rep. 2 (1954). These jurisdictional regulations fail utterly to effectuate the national labor relations acts; on the contrary, they are inconsistent with the purposes of these acts.

Congress in its regulation of interstate commerce, through the removal of the causes of industrial strife, sought to reach all such commerce be it great or small. The exclusion of the "small" is therefore incompatible with the intention of Congress.

> "The language of the National Labor Relations Act seems to make it plain that Congress has set no restrictions upon the jurisdiction of the Board to be determined or fixed exclusively by reference to the volume of interstate commerce involved. Section 2 (6) defines commerce as 'trade, traffic, commerce, transportation, or communication among the several States,' without reference to its volume, and declares in subsection (7) that 'The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.' Section 10(a) confers on the Board authority 'to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce.'
>
> "*The Act on its face thus evidences the intention of Congress to exercise whatever power is constitutionally given to it to regulate commerce* by the adoption of measures for the prevention or control of certain specified acts—unfair labor practices—which provoke or tend to provoke strikes or labor disturbances affecting interstate commerce. *Given the other needful conditions, commerce may be affected in the same manner and*

> *to the same extent in proportion to its volume, whether it be great or small. Examining the Act in the light of its purpose and of the circumstances in which it must be applied we can perceive no basis for inferring any intention of Congress to make the operation of the Act depend on any particular volume of commerce affected more than that to* which courts would apply the maxim *de minimis.*" (Emphasis added)
>
> *National Labor Relations Board v. Fainblatt*, 306 U. S. 601, 606-07 (1939), quoted with approval in *National Labor Relations Board v. Denver Building and Construction Trades Council*, 341 U. S. 675, 684 (1951).

The Board has candidly admitted that accepting jurisdiction over cases which fail to meet its jurisdictional standards would serve to carry out the purposes of the acts. Thus, it was said in the case which set the minimum interstate purchase standard currently enforced:

> "Although it would effectuate the policies of the statute to assert jurisdiction in cases of this kind where the direct inflow is substantial, due regard for these (budgetary) factors requires that we continue to decline jurisdiction where the direct inflow is less than $500,000 in value annually."
>
> *Federal Dairy Co.*, 91 N.L.R.B. 107 (1950).

Moreover, the Board's jurisdictional yardsticks, by withdrawing the protection of the acts from a substantial segment of industries affecting interstate commerce, actually impede the development of collective

bargaining and foments serious industrial unrest. Member Murdock makes this quite clear:

> "On the basis of the spot statistics in [various] industries . . . it seems probable that at least 25 percent and perhaps as much as 33⅓ percent of our past jurisdiction is now eliminated."
>
> . . . . . .
>
> "The new standards, though described by the majority as effectuating the purposes of the Act, have precisely the opposite effect. While it is not the Board's function to force collective bargaining on any employees, we cannot overlook the fact that the Congressional policy laid down in the 1935 Act and left unchanged in the 1947 amendments is to 'encourage the practice and procedure of collective bargaining' as a means of eliminating industrial disputes which burden commerce. Yet the specialized knowledge of this agency leads inexorably to the finding that a large share of the specific enterprises now cut loose from the Board's jurisdiction constitute an area of potential and real labor unrest which should demand the Board's close attention. The hundreds of thousands of employers and millions of employees at work in those enterprises now cut out from the Act form, as a whole, the very area in which organization of employees is least advanced and most vigorously pressed at the present time. Retail stores, particularly of the chain variety, small plants and operations, plants set up for national defense work under sub-contracts, small trucking concerns, franchised dealers in automobiles and

> farm machinery—these are the areas which at present have the lowest incidence of collective bargaining and employee self-organization and these are the areas, as the Board well knows, in which organizational activity by unions is most intense. It is very definitely the Board's concern that this area of intensifying union and anti-union activity of both the legal and illegal types is also precisely the area of greatest industrial unrest with the resulting serious threat to the free flow of commerce which Congress sought to protect. While it is true that many of these employers are small, it has earlier been noted that Congress specifically refused to exempt small employers from the Act . . .
>
> . . . . . .
>
> "I must therefore ask, with all candor, precisely how the majority proposes to 'effectuate the policies of the Act' by denying these employers and employees the very protection the statute was enacted to provide."
>
> (*Breeding Transfer Co.*, 110 N.L.R.B. No. 64) (Murdock Dissenting)

The Board sometimes properly refuses to accept jurisdiction of cases in order to enforce a labor policy. *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U. S. 767, 774 (1947); *National Labor Relations Board v. Denver Building and Construction Trades Council*, 341 U. S. 675, 684 (1951) (see p. 19 *infra*). However, the Board was motivated by budgetary considerations rather than labor policy in an-

nouncing its jurisdictional regulations (see pp. 19-20 *infra*.)

Blanket minimum standards taking account only of quantitative economic effect is a fallacious method of conserving the Board's resources. This Court has pointed to the error of abandoning the case-by-case approach:

> "'. . . Congress gave the Board authority to prevent practices tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce' . . . Congress therefore left it to the Board to ascertain whether proscribed practices would in particular situations adversely affect commerce when judged by the full reach of the constitutional power of Congress. *Whether or no practices may be deemed by Congress to affect interstate commerce is not to be determined by confining judgment to the quantitative effect of the activities immediately before the Board. Appropriate for judgment is the fact that the immediate situation is representative of many others throughout the country, the total incidence of which if left unchecked may well become far-reaching in its harm to commerce.*" (Emphasis added)
>
> *Polish National Alliance v. National Labor Relations Board*, 322 U.S. 643, 648 (1944) quoted with approval in *National Labor Relations Board v. Denver Building and Construction Trades Council*, 341 U.S. 675, 683 n. 13 (1951).

A method of reducing the Board's case load is provided by the LMRA itself. Section 10 (a), 61 Stat

146 (1947), as amended, 29 U.S.C. § 160(2) (1952), permits the Board to cede jurisdiction, case-by-case, to state agencies for enforcement of state law, the applicable provisions of which are consistent with those of the federal act.

A further remedy, if the Board fears being overburdened, lies in seeking a larger Congressional appropriation instead of depending upon quantitative rules of exclusion.

B. The Refusal of the NLRB To Enforce Federal Rights Granted by the Federal Labor Legislation Violates the Guaranty of Due Process of Law Provided by the Fifth Amendment to the Constitution of the United States

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The NLRA and the LMRA create a system of federal rights and remedies in the field of labor relations. This pattern of protection is given to all enterprises whose activities affect interstate commerce. While these rights are "public rights" in the sense that they may be enforced only through the administrative process, for constitutional purposes, this classification has no significance. *Garner v. Teamsters Union*, 346 U.S. 485, 500 (1953).

The refusal of the Board to exercise its jurisdiction in cases where commerce is affected, but not sufficiently to satisfy the Board's jurisdictional standards, effectively cuts off a class of enterprises from all rights under these acts.

This declination of jurisdiction and denial of a forum is based not on the merits of a case, not on the re-

lationship of the parties, not on the nature of a proceeding, not on any policy relating to the effectuation and fostering of collective bargaining or the promotion of a free flow of goods in interstate commerce by the elimination of labor disputes, but solely on the arbitrary basis of dollar volume of interstate transactions according to a schedule designed for the administrative convenience of the Board.

It is submitted that such an arbitrary denial of federal rights to those entitled to them constitutes an infringement of the guaranty of due process of law provided by the Fifth Amendment to the United States Constitution. *Cf. National Labor Relations Board v. Swift & Co.*, 130 F. Supp. 214 (D.C. E.D. Mo. 1955), affirmed on other grounds, 233 F. 2d 226 (8th Cir).

II. WHEN THE NATIONAL LABOR RELATIONS BOARD DECLINES TO ASSERT ITS JURISDICTION IN LABOR RELATIONS CASES AFFECTING INTERSTATE COMMERCE AND INVOLVING EMPLOYERS WHOSE VOLUMES OF INTERSTATE BUSINESS FALL BELOW THE MINIMUM PRESCRIBED BY THE NATIONAL BOARD AS A PREREQUISITE TO TAKING JURISDICTION, AN APPROPRIATE STATE AGENCY MAY ASSERT JURISDICTION AND APPLY STATE LAW

A. State Regulation of Labor Relations Is Not Supplanted unless There Is Direct Conflict with a Regulation of Congress Or with Congressional Intent That There Be No Regulation at All

"The same regard for the harmonious balance of our federal system, whereby the States may protect local interests despite the dormant Commerce Clause, allows State legislation for the protection of local interests so long as Congress has not supplanted local regulation either by a regulation of its own or by an unmistakable indication that there is to be no regulation at all.

"* * * The problem is one of judicial accommodation between respect for the supplanting authority of Congress and the reserved police power of the States. Long ago this policy of accommodation was formulated by this Court: 'We agree, that in the application of this principle of suprem-

acy of an act of Congress in a case where the State law is but the exercise of a reserved power, *the repugnance or conflict should be direct and positive, so that the two acts could not be reconciled or consistently stand together.*' Sinnot v. Davenport, 22 How. 227, 243."

* * * * * * * *

"A survey of the scores of cases in which the claim has been made that State action cannot survive some contradictory command of Congress leaves no doubt that State action has not been aside on mere generalities about Congress having 'occupied the field,' or on the basis of loose talk instead of demonstrations about 'conflict' between State and federal action. We are in the domain of government and practical affairs, and this Court has not stifled State action, unless what the State has required, in the light of what Congress has ordered, would truly entail contradictory duties or make actual, not argumentative, inroads on what Congress has commanded or forbidden." (Emphasis added)

Hill v. Florida, 325 U.S. 538, 547-48, 552 (1945) (Frankfurter dissenting).

This Honorable Court has consistently adhered to this doctrine expounded by Mr. Justice Frankfurter. Accordingly, in every case in which the principle of federal pre-emption has been applied to strike down state jurisdiction, the requisite conflict has been foreseen.

So in *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U.S. 767, 776 (1947):

> "If the two boards attempt to exercise a concurrent jurisdiction to decide the appropriate unit of representation, action by one necessarily denies the discretion of the other. The second to act either must follow the first, which would make its action useless and vain, or depart from it, which would produce a mischievous conflict."

And in *La Crosse Telephone Corp. v. Wisconsin Employment Relations Board*, 336 U.S. 18, 26 (1949):

> "A certification by a state board under a different or conflicting theory of representation may therefore be as readily disruptive of the practice under the federal act as if the orders of the two boards made a head-on collision. These are the very real potentials of conflict which lead us to allow supremacy [Footnote omitted] to the federal scheme even though it has not yet been applied in any formal way to this particular employer."

Again in *Garner v. Teamsters, Chauffeurs and Helpers Local Union No. 776 (AFL)*, 346 U. S. 485, 490-91 (1953):

> "Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies.
>
> • • • • • • • •

A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law."

Recently, in *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468, 480-81 (1955):

> "By the Taft-Hartley Act, Congress did not exhaust the full sweep of legislative power over industrial relations given by the Commerce Clause. Congress formulated a code whereby it outlawed some aspects of labor activities and left others free for the operation of economic forces. As to both categories, the areas that have been pre-empted by federal authority and thereby withdrawn from state power are not susceptible of delimitation by fixed metes and bounds. Obvious conflict, actual or potential, leads to easy judicial exclusion of state action.
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> . . . . . .
>
> Regarding the conduct here in controversy, Congress has sufficiently expressed its purpose to bring it within federal oversight and to exclude state prohibition, even though that with which the federal law is concerned as a matter of labor relations be related by the State to the more inclusive area of restraint of trade."

Conversely, state regulation has been upheld when no conflict with the federal act appeared. As summarized in the *Weber* case *supra*, 348 U. S. at 474-77: The states are permitted to exercise their authority to enjoin mass picketing accompanied by threats of bod-

ily injury and property damage; to prevent recurrent, unannounced work stoppages; to forbid enforcement of a maintenance-of-membership clause in a contract between an employer and a union since nothing in the federal acts sanctioned or forbade such a clause, and finally, when no federal administrative relief is available with which a state remedy might conflict, to entertain actions for damages based on violent union conduct.

B. No Conflict Arises Through State Regulation When the NLRB Declines To Exercise Its Jurisdiction Because of Non-Compliance With Its Jurisdictional Standards

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1. No conflict can arise between state regulation and substantive or procedural provisions of the federal acts.

The Board's refusal to assert its jurisdiction removes the protection of the federal acts from those enterprises which fail to qualify under the quantitative jurisdictional criteria. No federal forum is available, no federal procedures may be employed and no federal substantive labor relations provisions are applied to such businesses. For them, the Board has rejected the uniformity of control and the centralized administration provided by the national labor policy. As long as it adheres to present jurisdictional yardsticks "there is no existing or possible conflict or overlapping between the authority of the Federal and

State Boards [or Courts] : . . . This conduct is governable by the State or it is entirely ungoverned."

International Union, UAW, AFL, Local 232 v. Wisconsin Employment Relations Board, 336 U.S. 245, 254 (1949).

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2. No conflict arises through state regulation since the declination of the NLRB to assert its jurisdiction is not a determination that there should be no regulation at all.

State action is not permissible "where failure of the federal officials affirmatively to exercise their full authority takes on the character of a ruling that no such regulation is appropriate or approved pursuant to the policy of the statute." *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U.S. 767, 774 (1947). The National Labor Relations Board's refusal to entertain foremen's petitions, for example, was designed to effectuate a labor policy. "It made clear that its refusal to designate foremen's bargaining units was a determination and an exercise of its discretion to determine that such units were not appropriate for bargaining purposes. (citation omitted) *We cannot, therefore, deal with this as a case where federal power has been delegated but lies dormant and unexercised.*" 330 U.S. at 775 (Emphasis added).

When the Board refuses to accept jurisdiction except in accordance with its quantitative yardsticks, its power lies "dormant and unexercised," not to effectuate a labor policy, but for budgetary reasons and administrative convenience. As the Chairman of the

Board explained the motives for the promulgation of the 1954 standards:

> "I have long been convinced that the National Board could increase its contribution to the intelligent handling of labor relations by reducing its mammoth case load, and thus enabling its Members to devote more time and attention to a smaller number of disputes which have a more substantial impact upon our nation's economy. Thus it was that late last summer we revised our jurisdictional standards with a view towards withdrawing from some small, local enterprises over which the Board had previously asserted jurisdiction."
>
> (*Remarks by Guy Farmer, Chairman, National Labor Relations Board before the American Society for Personnel Administration, Cincinnati, Ohio, November* 2, 1954.)

It would, therefore, seem difficult to infer that the refusal of the NLRB to accept jurisdiction for budgetary reasons is a ruling similar in character and motivated by the same considerations of labor policy as an administrative ruling by the same Board refusing to certify foremen. What is said of Congress applies equally to the Board: "Where it leaves the employer-employee relation free of regulation in some aspects, it implies that in such matters federal policy is indifferent, and since it is indifferent to what the individual of his own volition may do we can only assume it to be equally indifferent to what he may do under the compulsion of the state." *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U. S. 767, 773 (1947).

3. No conflict arises between state regulation and Section 10(a) of the Labor Management Relations Act.

By its terms, section 10(a), 61 Stat. 146 (1947), as amended, 29 U.S.C. § 160(2) (1952), provides for the ceding to state labor boards, under certain conditions, of cases over which the National Board has taken jurisdiction. When the Board declines to act it removes the coverage of the federal acts over the class of cases rejected, and there exists no concurrency of regulation which this provision envisages. ". . . Cession of jurisdiction is to take place only where State and federal laws have parallel provisions. *Where the State and federal laws do not overlap, no cession is necessary because the State's jurisdiction is unimpaired.*" (Emphasis added)

> *Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Board*, 336 U.S. 301, 313 (1949).

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4. No conflict arises between federal and state regulation because of confusion in determining jurisdiction.

The National Board, the state boards and state courts must determine their own jurisdiction to adjudicate each case brought to their attention. This Court has noted that it is not always easy for a state agency to determine whether the subject matter in a particular proceeding is the concern exclusively of the federal Board and withdrawn from the regulation of the states. Difficulty in determining state jurisdiction, however, is not a basis for denying all state regu-

lation. *Weber v. Anheuser-Busch, Inc.*, 348 U.S. 468, 481 (1955).

It is submitted that the jurisdictional standards set forth by the Board mean what they say, and that it is within the competence of state agencies to determine therefrom the permissible areas of state jurisdiction. Since the Board's jurisdictional criteria, in actuality, do not bounce back and forth from month to month like a ping-pong ball, as has been suggested, predictions of "intolerable confusion" seem unduly pessimistic.

III. THE NATIONAL LABOR RELATIONS BOARD'S JURISDICTIONAL REGULATIONS LIMIT THE SCOPE OF THE FEDERAL LABOR RELATIONS ACTS

Congress has granted to the National Board power to take jurisdiction over such portion of the nation's commerce as it sees fit, even to the full extent of the federal constitutional power. *National Labor Relations Board v. Denver Building and Construction Trades Council*, 341 U.S. 675, 684 (1951). The Board was delegated the power to make regulations to carry out the provisions of the acts. 61 Stat. 140 (1947), 29 U.S.C. § 156 (1952). In exercising this power to promulgate minimum jurisdictional standards, the Board, in effect, limited the operative scope of the federal labor acts. Congress could have itself narrowed jurisdiction under the labor relations statutes to transactions *substantially* affecting commerce. Instead, it chose to delegate to the Board, in the exercise of its discretion, the power to determine how far the coverage of the acts should extend. By the present jurisdictional yardsticks, the Board has made that determination. Accordingly, federal jurisdiction is coextensive with, and limited to, the jurisdictional standards announced by the Board. Hence, as to employers whose volumes of interstate transactions fall below the jurisdictional standards, the state agencies have *exclusive* jurisdiction. *Cf. Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U.S. 767, 774 (1947). (States may act on "separable segments" of a federally regulated subject matter.)

CONCLUSION

Decisions by This Honorable Court that the NLRB need not, and the state agencies may not, regulate the small interstate employer would seriously discriminate against intrastate commerce. For, while the substantial interstate employer falls within the coverage of the federal labor law, smaller enterprises affecting primarily intrastate commerce, are denied the protection of both federal and state labor law. Such decisions would insulate the most industrially harmful labor practices from all legal remedy. It would encourage employers to adjust their volumes of interstate transactions so as to fall within a "no-man's land" where anti-collective bargaining practices could openly be indulged in.

For these reasons it is respectfully requested that This Honorable Court reach decisions which will either:

1. Invalidate the refusal of the NLRB to assert its statutory jurisdiction in labor relations cases affecting commerce on the sole ground that the employers' volumes of interstate transactions fall below certain minimum standards promulgated by the Board as a prerequisite to its taking jurisdiction; or,

2. Permit appropriate state agencies to assert jurisdiction and apply state law when the NLRB declines to accept jurisdiction in labor relations cases involving employers whose volumes of interstate business fall

short of the minimum prescribed by the Board as a prerequisite to its taking jurisdiction.

Respectfully submitted,

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